

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7188

BILL NUMBER: HB 1221

NOTE PREPARED: Mar 4, 2003

BILL AMENDED: Mar 3, 2003

SUBJECT: Regulating Wetlands, Environmental Rulemaking, and NPDES variances.

FIRST AUTHOR: Rep. Bottorff

FIRST SPONSOR: Sen. Gard

BILL STATUS: As Passed - House

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: (Amended) This bill establishes a permit program for the filling, dredging, and excavating of certain wetlands. The bill establishes a wetlands mitigation bank program. It establishes criteria for variances from water quality standards that are at least in part the basis of a National Pollutant Discharge Elimination System (NPDES) permit. This bill also adds an economist to the membership of the Air Pollution Control Board, Water Pollution Control Board, and Solid Waste Management Board (boards) as a nonvoting advisory member. The bill also specifies that ex officio members of the boards are nonvoting members. It also repeals provisions allowing appointment of a proxy for meetings by ex officio board members. This bill requires the boards to contract with an individual, a business firm, or a legal firm to act as technical secretary. It allows the boards to contract with an individual or a legal firm to act as legal counsel. The bill also transfers duties from the Department of Environmental Management to the technical secretary.

Effective Date: (Amended) Upon passage; July 1, 2003.

Explanation of State Expenditures: (Revised) The proposal contains a number of rulemaking directives. Some of the directives are already included in the rulemaking that was preliminarily adopted by the Water Pollution Control Board, while other rulemaking directives are new. Development of rulemaking for those portions that were already preliminarily adopted would not have a fiscal impact, whereas new rulemaking directives would have staff costs associated with rule development. Some expenses for implementing the programs have already been accounted for under the preliminarily adopted rule, while new directives could require additional staff resources.

IC 13-15-1-2(b) directs the Water Pollution Control Board to establish requirements for the issuance of permits for wetlands activity and to establish procedures for operation of the up-front wetlands mitigation

program. Additionally, the proposed IC 13-15-3-2(b) requires that a permit for wetlands activity may be issued for any period determined by the department to be appropriate. IC 13-18-3-1(b) directs the Water Board to adopt rules to establish the period in which IDEM must act on an application for certification under Section 401 of the Clean Water Act. These provisions are included in the preliminarily adopted rule. All rulemaking requirements listed in IC 13-18-22-6 are also in the preliminarily adopted rule.

All rulemaking requirements listed in IC 13-18-22-4 are in the preliminarily adopted rule with the exception of IC 13-18-22-4(1)(A), pertaining to an application form that includes the wetland categorization. IDEM will incur additional administrative costs associated with rulemaking and implementing the provision. Costs are indeterminable at this point.

IC 13-18-22-7 directs the Water Board to adopt a rule before July 1, 2005, to establish procedures to:

- (1) designate specific real property as outstanding state wetlands; and
- (2) remove real property from the designation as outstanding state wetlands.

This provision is not included in the preliminarily adopted rule. IDEM will incur additional administrative costs associated with rulemaking and implementing this provision. Costs are indeterminable at this point.

Registry of Newly Formed Wetlands. IC 13-18-22-8 directs the Department to create and maintain a registry of newly formed wetlands. The Department may charge a fee of not more than \$100 for registration in the registry; and a fee of not more than \$50 to maintain the registry. Revenue collected are to be used for the operation of the registry. IDEM may need to increase staff to implement this provision. If IDEM hired two environmental managers (PAT II), additional costs would equal \$103,150, including benefits.

Wetland Mitigation Bank Program. IC 13-18-23 directs the Water Pollution Control Board to adopt rules regarding the wetland mitigation program. Portions of the rule requirements are in the preliminarily adopted rule. The Department may charge the lesser of \$10 per acre or \$100 per wetland to those wanting to register a wetland. An entity that sells mitigation credits must also pay a fee of \$25 to the Department. The amount of revenue that will be generated is indeterminable. However, IDEM may need to increase staff to implement this provision. If IDEM hired two environmental managers (PAT II), additional costs would equal \$103,150, including benefits.

Nonrule Policy Document for Permits for Wetland Activity. A noncode section directs IDEM to present a nonrule policy document to the Water Board, before September 1, 2003, for filing an application for an individual permit for wetland activity that occurs after June 30, 2003, and before the effective date of the rules. The noncode section outlines a detailed list of what is to be included in the nonrule policy document. Many of these provisions have been addressed in the preliminarily adopted rule, except for the categorization of wetlands. Developing a nonrule policy on this provision will increase administrative expenses by an indeterminable amount.

Report to the Environmental Quality Service Council (EQSC). A noncode provision requires IDEM to report to the EQSC on the development of the nonrule policy documents and the rules. Any costs associated with this provision could be absorbed with existing resources. The proposal also directs the study of the EQSC relative to oversight of wetland regulation. The EQSC should be able to absorb any additional administrative costs associated with this oversight given its current budget which was \$12,000 during the 2002 interim. (Legislative Council resolutions in the past have established budgets for interim study committees ranging from \$12,000 to \$18,500 per interim for committees with 16 members or more.)

NPDES Program. There will be no fiscal impact to the Department of Environmental Management (IDEM)

associated with the revisions to the statutory requirements for a variance from an NPDES permit condition. The costs for processing an NPDES permit variance request will not differ significantly as a result of the proposal. Costs associated with amending the rules would be absorbed with existing resources.

Adding Three Economists to the Environmental Rulemaking Boards. Adding an economist to the membership of each ERB will increase, by an expected minimal amount, expenses for the boards. Lay members receive per diem and mileage. Expenses for the boards for 2001 were as follows: Air, \$15,487; Water, \$13,687; Solid Waste, \$14,548. Total expenses equaled \$43,722.

Technical Secretaries for the Environmental Rulemaking Boards. Currently, the Air Pollution Control Board, the Water Pollution Control Board, and the Solid Waste Management Board each appoints a technical secretary who reviews materials prepared for the boards by the Department of Environmental Management (IDEM). Each board also contracts with a legal counsel who advises the board on legal matters and reviews material prepared by the Department and directs the Department to make necessary changes. IDEM staff handle correspondence, arrange for investigations and surveys, and prepare reports as directed by the board. The technical secretaries and legal counsels are compensated \$50 per meeting plus mileage.

The proposal expands the duties of the technical secretaries by having them perform the work that IDEM staff currently perform for the boards. The proposal also requires the secretaries to serve as hearing officers, to convene and lead board meetings, and to initiate and manage rulemaking efforts in cooperation with the Department. Eliminating IDEM's responsibilities could save the Department some expenses associated with providing the services for the boards. However, increasing the responsibilities of the secretaries and having the boards formally contract for these services will increase costs. The impact is indeterminable at this time.

Overall Funds and Resources Needed. The funds and resources required by the proposal could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. As of September 2002, IDEM reported 894 full-time employees with 155 vacancies for a total of 1,071. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of State Revenues: (Revised) *Registry of Newly Formed Wetlands.* IC 13-18-22-8 directs the Department to create and maintain a registry of newly formed wetlands. The Department may charge a fee of not more than \$100 for registration in the registry; and a fee of not more than \$50 to maintain the registry. The amount of revenue that will be generated by this provision is indeterminable.

Wetland Mitigation Bank Registration. The owner of a wetland wanting to join the bank must register with IDEM. Registration includes a one time registration fee of \$10 per acre or \$100 per wetland. A person that purchases wetlands mitigation credits must pay a fee of \$25 to IDEM for sale of credits of any amount based on a wetland registered with the bank. The amount of revenue that will be generated by this provision is indeterminable.

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Department of Environmental Management

Local Agencies Affected: Local units conducting wetland activities.

Information Sources: Department of Environmental Management

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